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December 28, 2005

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Federal Communications Commission
Office of the Secretary

Samuel Feder, General Counsel
Federal Communications Commission
12th Street, SW
Washington, DC 20554

Re: WC Docket No. 04-313 - WC Docket No. 01-338

Dear Mr. Feder:

The Maine Public Utilities Commission (MPUC) would like to request a legal opinion from your office concerning a discrepancy between the language of the *Triennial Review Order Remand Order (TRRO)* and the rule implementing the *TRRO*. Specifically, paragraph 128 of the *TRRO* states:

Limitation on DS1 Transport. On routes for which we determine that there is no unbundling obligation for DS3 transport, but for which impairment exists for DS1 transport, we limit the number of DS1 transport circuits that each carrier may obtain on that route to 10 circuits. This is consistent with the pricing efficiencies of aggregating traffic. While a DS3 circuit is capable of carrying 28 uncompressed DS1 channels, the record reveals that it is efficient for a carrier to aggregate traffic at approximately 10 DS1s. When a carrier aggregates sufficient traffic on DS1 facilities such that it effectively could use a DS3 facility, we find that our DS3 impairment conclusions should apply.

(emphasis added). However, the FCC's rules (47 C.F.R. § 51.319(e)(2)(ii)) appear to set a different standard and do not make the same cross reference to the unavailability of DS3 transport that the text of the *TRRO* does:



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(A) General availability of DS1 transport. Incumbent LECs shall unbundle DS1 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are Tier 1 wire centers. As such, an incumbent LEC must unbundle DS1 transport if a wire center at either end of a requested route is not a Tier 1 wire center, or if neither is a Tier 1 wire center.

(B) Cap on unbundled DS1 transport circuits. A requesting telecommunications carrier may obtain a maximum of ten unbundled DS1 dedicated transport circuits on each route where DS1 dedicated transport is available on an unbundled basis.

Disagreements have arisen between Verizon and the CLECs concerning whether the 10-circuit limit for DS1 dedicated transport applies only on routes where Verizon is relieved of its unbundling obligation for DS3 dedicated transport. State commissions have been asked to resolve those disputes and have reached conflicting decisions. Some states, such as New York, focused on the overall policy and found that the language of the order should govern, while other states, such as Massachusetts, have focused on statutory construction and found that the language in the rule governs.

The MPUC was recently required to reach a decision on this issue and, after much debate, determined that while we were sympathetic to the CLECs' policy arguments, general rules of statutory construction suggested that the rule should prevail. *Wholesale Tariff Proceeding*, Docket No. 2002-682, Order (Me. P.U.C. Sept. 13, 2005) ("While we are sympathetic to the arguments raised by Conversent and to the fact there is a split among the states on how to interpret the rule, we do not believe we can or should resolve this issue by looking beyond the language of the rule itself. The entity to best resolve this issue is the FCC...") We further determined, however, that we should bring this matter to your attention and ask how to reconcile the clear conflict between the language in the FCC's rule (47 C.F.R. § 51.319(e)(ii)) and the language in the order adopting the rule (*TRRO* at ¶ 128).

Accordingly, we respectfully request that you review this matter and issue a legal opinion indicating whether the language of the order or rule should govern or otherwise explain how the two provisions can be read in a consistent manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "Trina M. Bragdon", with a long horizontal flourish extending to the right.

Trina M. Bragdon, Esq.
Deputy Director of Telecommunications
Maine Public Utilities Commission

cc: Thomas Navin, Chief of the Wireline Competition Bureau
Parties to MPUC Docket No. 2002-682
